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Hearing: March 30, 2009 at 10:00 a.m.
Objections Due: March 26, 2009 at 4:00 p.m.

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

CIRCUIT CITY STORES, INC., et al.,

Debtors,

)
) **Chapter 11**
) **Case No. 08-35653-KRH**
)
) **(Jointly Administered)**
)
)
)
)

**MOTION OF 610 & SAN FELIPE, INC.
FOR AN ORDER COMPELLING DEBTOR TO IMMEDIATELY PAY
POST-PETITION RENT AND OTHER RELATED CHARGES PURSUANT TO
11 U.S.C.
§ 365(d)(3) AND GRANTING RELATED RELIEF**

610 & San Felipe, Inc. (“San Felipe”), by and through its undersigned counsel,
and in support of its motion for an order compelling Circuit City Stores, Inc. and its
affiliated entities (collectively the “Debtor”) to immediately pay post-petition rent and
other related charges pursuant to 11 U.S.C. § 365(d)(3) respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtor has failed to pay rent to San Felipe due under the lease for the post-petition period of November 10, 2008 through November 30, 2008 (the "Post-Petition Period"). Accordingly, San Felipe respectfully requests that the Court enter an Order directing the Debtor to immediately pay post-petition rent and other related charges to San Felipe.

JURISDICTION

2. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

3. San Felipe is the landlord of commercial space located at San Felipe and Loop 610, Houston, Texas (the "Leased Premises").

4. San Felipe is a party to a Lease Agreement (the "Lease") with the Debtor for the Leased Premises. A true and correct copy of the Lease has been previously filed with and attached to the Proof of Claim.

5. On November 10, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

6. The Lease has been rejected by Debtor effective as of March 10, 2009 pursuant to the Debtors' Notices of Rejection of Unexpired Leases and Abandonment of Personal Property filed on March 4, 2009.

7. Subsequent to the Petition Date, the Debtor has failed to pay Post-Petition Rent to San Felipe due under the Lease for the Post-Petition Period in the amount of \$58,089.39 (“Post-Petition Rent”).

REQUESTED RELIEF

8. San Felipe respectfully requests that the Court enter an Order that compels the Debtor to immediately pay Post-Petition Rent and other related charges to San Felipe.

BASIS FOR RELIEF

9. Section 365(d)(3) of the Bankruptcy Code states that a Debtor must “timely perform all the obligations of the debtor, ... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected...” 11 U.S.C. § 365(d)(3). Section 365(d)(3) is intended to protect landlords from incurring additional losses during the post-petition, pre-rejection period.

10. San Felipe is compelled to continue its post-petition performance; however, the Debtor continued to occupy and possess the Leased Premises without performing its post-petition obligations under the Lease.

11. Courts have continually held that a landlord is entitled to immediate payment of post-petition, pre-rejection rental payments pursuant to 11 U.S.C. 365(d)(3). *See In re: Pudgie's Div. of New York, Inc.*, 202 B.R. 832 (Bank. S.D.N.Y. 1996); *see also In re Trak Auto Corporation*, 277 B.R. 655, 665 (Bankr. E.D. Va. 2002), *rev'd on other grounds*, 367 F3d 237 (4th Cir. 2004). In *In re: Pudgie's*, the Bankruptcy Court of the Southern District of New York strictly construed § 365(d)(3) to hold that nonresidential lessors were entitled to immediate payment of post-petition, pre-rejection rent at the full

rate expressed in the lease. Accordingly, the Court should enter an order that compels the Debtor to immediately pay the Post-Petition Rent to San Felipe pursuant to § 365(d)(3) of the Bankruptcy Code.

12. Additionally, pursuant to Section 36(f) of the Lease, the Debtor is obligated to reimburse San Felipe for the reasonable attorneys' fees and costs incurred by San Felipe in connection with the Debtor's compliance under the terms of the Lease. As such, San Felipe respectfully requests that the Debtor be directed to pay the attorneys' fees and costs incurred by San Felipe in connection with the filing and prosecution of this Motion.

NOTICE

13. Notice of this Motion will be given to (i) counsel to the Debtors, (ii) the Office of the United States Trustee for the Eastern District of Virginia, Richmond Division, (iii) Counsel for the Official Committee of Unsecured Creditors, and (iv) all parties that have requested notice of papers pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. San Felipe submits that no other or further notice of this Motion is required.

WAIVER OF MEMORANDUM OF LAW

14. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, San Felipe requests that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

15. No previous motion for the relief sought herein has been made to this Court or any other court.

WHEREFORE, San Felipe respectfully requests the entry of an order compelling the Debtor to immediately pay San Felipe its Post-Petition Rent and other related charges totaling \$58,089.39, plus San Felipe's reasonable attorneys' fees and costs in connection with this Motion and grant San Felipe such other and further relief as this Court deems just and proper.

Dated: March 16, 2009

Respectfully submitted,

JACKSON & CAMPBELL, P.C.

By: /s/ David H. Cox

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Counsel for 610 & San Felipe, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served on the parties receiving electronic notice via the Court's CM/ECF system, as appropriate, by electronic means and by First Class Mail (postage prepaid) on the following attached Service List and on the following parties via US regular mail, on this the 16th day of March 2009.

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